

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-275-S**

IN RE:)
Application of Condor Environmental,)
Inc., Requesting an Expansion of its)
Existing Sewer Service Area to Include)
Certain Portions of Anderson County)
and Saluda County and Approval of)
Agreement.)

**SCWSA’s Response to Motion for Reconsideration and
Reply to Condor’s Objection to SCWSA’s Petition to Intervene**

Saluda County Water and Sewer Authority (SCWSA) hereby responds to Condor Environmental, Inc.’s (Condor) motion for reconsideration of the Chief Hearing Officer’s decision to grant SCWSA’s petition to intervene, and replies to Condor’s objection to such intervention. In response and reply, SCWSA respectfully submits as follows.

1. Prior to Article VIII, § 7 of the South Carolina Constitution, the General Assembly had the power to control local functions and enact special legislation which was not of state-wide application but addressed matters of local concern such as in a single county. Article VIII, § 7 ended the practice of special legislation and accomplished Home Rule. *County of Florence et al. v. West Florence Fire District*, 422 S.C. 316, 322, 811 S.E.2d 770, 774 (2018). SCWSA is a pre-Home Rule special purpose district. SCWSA was created by Act No. 1015, 1970 Joint Acts and Resolutions.

Under Act No. 1015, SCWSA’s “service area shall include all of Saluda County, excluding any area within an incorporated municipality”; SCWSA is given Saluda County as “the service area of the [A]uthority”; and “no ... agency ...shall extend its present facilities beyond the corporate limits

without prior written approval of the [A]uthority.”¹ (Sections 1, 6 and 13, Act No. 105, *supra.*). S.C. Code Ann. § 6-11-320(A) (1992) provides a pre-March 7, 1973 special purpose district (of which SCWSA is one) may provide sewer service within its boundaries if it has permission from the county where the district is located, except the district may not provide sewer to areas then being served by another government. By Ordinance 14-92, Saluda County ordained that SCWSA is authorized to provide sewer service within the same exclusive territory that it furnishes water service. Palmetto Pointe is in the unincorporated portion of Saluda County.

2. In addition to its territorial protection under State law, SCWSA is indebted to the United States Department of Agriculture, Rural Development (RD); and thus, is protected by federal law from any curtailment of its service area. The Consolidated Farm and Rural Development Act (7 U.S.C. § 1921, *et seq.*) protects SCWSA’s territory from encroachment by other utilities. 7 U.S.C. § 1926(b) states, “The service provided or made available through any such association shall not be curtailed or limited ... , by the granting of any private franchise for similar service within such area during the term of such loan; ...”² SCWSA is likely to remain indebted to RD for at least the next

¹ In examining an identical provision in the enabling act of Edgewood County Water and Sewer Authority (ECWSA), the South Carolina Court of Appeals ruled that “the primary purpose of the statute is to regulate competition between [ECWSA] and potential area water suppliers.” *Edgewood County Water and Sewer Authority v. City of North Augusta*, 289 S.C. 148, 150, 345 S.E.2d 260, 261 (Ct. App. 1986) (Injunction granted to keep City from constructing a water storage tank within the service area of ECWSA).

² The analysis for private encroachment is the same as for public encroachment. This section “unambiguously prohibits any curtailment or limitation of a FmHA–indebted water association’s services resulting from municipal annexation or inclusion.” *City of Madison v. Bearcreek Water Association, Inc.*, 816 F.2d 1057, 1059 (5th Cir. 1987). “This language indicates a congressional mandate that local governments not encroach upon the services provided by such association, be that encroachment in the form of competing franchises, new or additional permit requirements, or similar means.” *Id.* See also *City of Conway v. Grand Strand Water and Sewer Authority*, 535 F. Supp. 928, 933 (D.S.C. 1982) (Plaintiff’s attempt to interfere with Defendant’s water service area “is precisely the sort of action prohibited by this section [1926(b)] – the expansion of municipal facilities into an area served by a district receiving Farmer’s Home Administration financing.”); *Chesterfield Rural Water Company, Inc. v. The Town of Cheraw, South Carolina*, C.A. No.: 4:91-1663-21 (District of South Carolina, Florence Division 1993) Order, p.8, Traxler, J. (§ 1926(b) prevented Town from expanding its water services beyond the town limits or

40 years. Condor is asking this Commission for a private territorial right to serve within Saluda County. Any grant of such right without the consent of SCWSA and RD would be a violation of State and federal law.

3. Condor avers it must be given emergency conditional approval to serve by the Commission. Yet the septic drain field at Palmetto Pointe has not been completely installed. Nor has SC DHEC issued a permit to operate the septic drain field to Condor or American Land Holdings, LLC (ALH). SC DHEC has just issued a permit to construct which does not state anything about Condor owning or even operating the septic drain field. Under the 208 Water Quality Management Plan for the State (208 Plan), adopted in accordance with the federal Clean Water Act, SCWSA is the Management Agency for the unincorporated areas of Saluda County. (208 Plan, p. 26). DHEC is the Planning Agency. (208 Plan, p.9). “Unless specifically granted an exception, in areas where centralized sewer is not currently accessible, DHEC **requires** public ownership of onsite wastewater systems serving more than one piece of deeded property.” (*Id.*, p.12). SCWSA has not seen a letter of consistency in favor of Condor issued by SC DHEC for Palmetto Pointe. It is not evident to SCWSA at this time that SC DHEC has done an administrative 208 Plan review for Palmetto Pointe. SCWSA has the ability to own and operate and a history of owning and operating septic drain fields in Saluda County, as SCWSA set forth in its Petition to Intervene.

4. SCWSA is the water provider at Palmetto Pointe. SCWSA is the owner of non-exclusive easements where its water infrastructure has been installed. To the best of SCWSA’s knowledge, ALH is having at least some of the sewer collection lines installed within the same easement area as the water infrastructure. Thus, SCWSA is indeed interested and affected by who

“from offering water services within the service area of the Water Co.”).

will ultimately own and operate the sewer collection system at Palmetto Pointe. As is true with many local governments, SCWSA has the power to prescribe rules and regulations, and “to do all acts and things necessary and convenient to carry out any function or power committed or granted to the [A]uthority,” which would include mandatory sewer hookup once SCWSA has a centralized sewer collection system to Palmetto Pointe. (Act No. 1015, Section 7). Under *Distin v. Bolding*, 240 S.C. 545, 550, 126 S.E.2d 649 (1962), the General Assembly has the right, through the enactment of the enabling act for a water and sewer district, to permit the governing commission thereof to “adopt mandatory regulations requiring connection to and use of the District sewer system.” And, of course, SCWSA has the power to condemn the septic drain field at any time in the future by paying just compensation which would be, given Condor and ALH are private parties, the annual gross income less operating expenses capitalized at a rate appropriate for this septic drain field. At \$18.60 per user, 45 users, Condor would have annual gross revenue of \$10,044. So this is not an expensive acquisition.

5. The Chief Hearing Officer ruled correctly on SCWSA’s Petition to Intervene. SCWSA has a right and an interest in this docket. SCWSA has set forth the grounds for intervention and its position in this proceeding. Unlike ALH which is wholly aligned with Condor and therefore already adequately represented in the proceeding, SCWSA is adverse to the position that Condor has thus far advocated and SCWSA is not identically aligned with any other party. SCWSA has a legal right to be heard.

WHEREFORE, for the foregoing reasons, the decision of the Chief Hearing Officer to grant SCWSA's Petition to Intervene should be upheld.

Charlotte, NC

DRISCOLL SHEEDY, P.A.

Date: 12/18/2020

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